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State of Wisconsin
1999 - 2000 LEGISLATURE

P3 (Redraft)
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BEM:cmh/jg/kg:jf been run)

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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- 1 AN ACT relating to: repealing, consolidating, renumbering, amending and
2 revising various provisions of the statutes for the purpose of correcting errors,
3 supplying omissions, correcting and clarifying references, and eliminating
4 defects, anachronisms, conflicts, ambiguities and obsolete provisions (Revision
5 Bill).

Analysis by the Legislative Reference Bureau

This bill is prepared pursuant to s. 13.93 (2) (j), stats., for the purpose of modernizing statutory structure and language in order to increase conformity with current statutory style and to improve user readability and accessibility. Throughout this bill, the word form of numbers is replaced by digits; disfavored language is replaced with preferred terms and spellings; long sentences and statutory units are subdivided or otherwise shortened; and nonspecific articles and references are replaced. Some punctuation has been changed to accommodate the other changes.

For further information, see the NOTES provided by the the revisor of statutes bureau in the body of the bill that indicate the treatments that have been made to the specific statutory units. No substantive changes are intended.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

NOTE: None of the changes made by this bill are intended to be substantive.

SECTION 1

1 **SECTION 1.** 80.04 (1) of the statutes is amended to read:

2 80.04 (1) No supervisor ~~shall~~ may act in laying out, altering, widening or
3 discontinuing any highway in which the supervisor may be personally interested.
4 If one supervisor is interested the other ~~two~~ 2 supervisors shall act; ~~if two.~~ If 2
5 supervisors are interested the ~~third~~ 3rd supervisor shall act in the matter.

NOTE: Shortens sentences, replaces word form of numbers with digits and replaces language for greater readability and conformity with current style.

6 **SECTION 2.** 80.04 (2) of the statutes is amended to read:

7 80.04 (2) Whenever there ~~shall be less than two supervisors in any~~ is only one
8 supervisor in a town, the ~~petition~~ application authorized by s. 80.02 may be made to
9 the county board, which shall ~~thereupon~~ promptly appoint a committee of ~~three~~ 3 of
10 its members. ~~Said~~ The committee shall ~~proceed and act upon such petition the~~
11 application in the same manner and with the same powers in every respect as the
12 supervisors of ~~such~~ the town might do.

NOTE: Replaces word form of numbers with digits and replaces language for greater readability and conformity with current style.

13 **SECTION 3.** 80.08 of the statutes is amended to read:

14 **80.08 Width of highways.** Except as ~~otherwise expressly provided by~~ in s.
15 80.13, highways shall be laid out at least ~~three rods~~ 49.5 feet wide, and when no width
16 is specified in the order the highway shall be ~~4 rods~~ 66 feet wide.

NOTE: Replaces "rods" with a more common unit of measurement.

17 **SECTION 4.** 80.11 (1) of the statutes is amended to read:

18 80.11 (1) Whenever it ~~shall be deemed~~ is considered necessary to lay out, alter,
19 widen or discontinue a highway upon the line between ~~two~~ 2 towns, or extending
20 from one town into an adjoining town, it shall be done by the supervisors of ~~said~~ the
21 2 towns acting together, ~~and if such.~~ If the highway is laid out or altered it may be
22 either upon or as near to the town line ~~or as near thereto~~ as the situation of the

1 ground will admit; and they. The supervisors of the 2 towns acting together may vary
2 the same location on either ~~on one side or the other~~ of such the town line as they may
3 ~~deem~~ consider to be necessary.

4 **SECTION 5.** 80.11 (2) of the statutes is renumbered 80.11 (2) (a) (intro.) and
5 amended to read:

6 80.11 (2) (a) (intro.) The An application therefor under sub. (1) shall be ~~in~~ all
7 of the following:

8 1. In duplicate, addressed,

9 2. Addressed to the supervisors of both towns, ~~and be signed,~~

10 3. Signed by at least 6 resident freeholders in each town; ~~and be delivered~~

11 4. Delivered to a supervisor or the clerk of each town.

12 (b) Upon receipt of ~~such an~~ an application under par. (a), the supervisors shall
13 promptly fix ~~a, and give notice of, the time when~~ and place ~~for deciding thereon, and~~
14 ~~give notice thereof where the application will be decided.~~ The notices of the time and
15 ~~place of meeting notice~~ shall be signed all of the following:

16 1. Signed by a majority of the supervisors of each town, ~~and published,~~

17 2. Published as a class 2 notice, under ch. 985, in ~~said each of the towns, and~~
18 ~~served,~~

19 3. Served as required by s. 80.05.

20 (c) A majority of the supervisors of each town shall meet jointly at the time and
21 place named in the notice under par. (b) to decide upon ~~such the~~ application and to
22 sign the order and the award of damages, ~~and in all other things the.~~ The proceedings
23 shall be the same as ~~are required by law~~ in laying out, altering, widening or
24 discontinuing highways located wholly within a one town. The orders, awards,

1 notices and all papers shall be in duplicate, and one duplicate of each shall be filed
2 with each town clerk, ~~and the~~. The order shall be recorded in each town clerk's office.

3 **SECTION 6.** 80.11 (3) of the statutes is renumbered 80.11 (3) (a) and amended
4 to read:

5 80.11 (3) (a) The said supervisors, ~~upon laying out, altering or widening such~~
6 ~~highway may determine, in the order, under sub. (2) (c) may designate~~ what part of
7 ~~such the~~ highway shall be made and kept in repair by each town, and what share of
8 the damages, if any, shall be paid by each; ~~and each town~~. Each town shall have all
9 of the rights and be subject to the liabilities in relation to the part of ~~such the~~ highway
10 to be made or repaired by it as if it were wholly located in ~~such that~~ town. ~~If no such~~
11 ~~apportionment shall have been made in the order laying out, altering or widening~~
12 ~~such highway or any part thereof; or if such highway or any part thereof shall have~~
13 ~~had its origin in user; or if in the judgment of said supervisors circumstances have~~
14 ~~so altered since the last previous apportionment or reapportionment of such highway~~
15 ~~or any part thereof as to render the same inequitable or impracticable, a~~

16 (b) 1. (intro.) A majority of the supervisors of each town, meeting together, may
17 make ~~such an order in accordance with par. (a)~~ apportioning or reapportioning ~~such~~
18 a town line highway or any part thereof ~~as of the highway that they may deem~~
19 consider advisable, ~~which if any of the following conditions exists:~~

20 2. An order made under this paragraph shall be filed as hereinbefore provided.
21 ~~When so made such order in sub. (2) (c) and shall be of~~ have the same force and effect
22 as an order made in connection with the original laying out of ~~such the~~ highway.

23 (c) Any written order or agreement made before August 27, 1947 ~~made~~, by a
24 majority of the supervisors of each town concerned, acting together, apportioning or
25 reapportioning a town line highway is hereby validated ~~and shall be of~~ has the same

1 ~~force and effect as though made on or after said date. Where flowage crosses and~~
2 ~~eovers a portion of a town line road, then that part of such order which previously~~
3 ~~fixed their respective liabilities shall be deemed vacated August 27, 1947.~~

4 **SECTION 7.** 80.11 (3) (b) 1. a., b. and c. of the statutes are created to read:

5 80.11 (3) (b) 1. a. No apportionment has been made in an order laying out,
6 altering or widening the highway or a part of the highway.

7 b. The highway or a part of the highway had its origin in user.

8 c. In the judgment of the supervisors circumstances have been so altered since
9 the last apportionment of the highway or part of the highway that the apportionment
10 has been rendered inequitable or impracticable.

11 **SECTION 8.** 80.11 (4) of the statutes is renumbered 80.11 (4) (a) (intro.) and
12 amended to read:

13 80.11 (4) (a) (intro.) ~~If by any change of the boundaries of either or both such~~
14 ~~towns including that caused by flowage the~~ The part of an order fixing the liabilities
15 of towns in regard to a town line highway is vacated if any of the following occurs:

16 1. The territory of either shall be town is increased or diminished, or in the
17 event a by a change of the boundaries of either town including a change caused by
18 flowage.

19 2. A portion of said the town line highway is or has been taken over by the state
20 or county under the state or county highway system, or if a.

21 3. A new town or village be is formed out of a part of the territory of either or
22 both of said the towns, having a portion of such the town line highway within its
23 borders or if a.

24 4. A portion of a town line road highway is crossed and covered by flowage, that
25 part of such order fixing their liabilities shall be deemed vacated, and a.

SECTION 8

NOTE: Subdivides provision, reorders text and moves stricken material to a separate subdivision for greater readability and conformity with current style. See the next section of this bill.

(b) 1. In the event that an order or part of an order is vacated under par. (a) 1., 2. or 4., a majority of the supervisors of each such town that is party to the order shall, before the time for making the next tax roll, meet together with a majority of the supervisors of such new town or with the president of such village, and all of them when so convened shall, if they can agree, and attempt to make a new order apportioning the liabilities on account of such the highway, which shall be filed as hereinbefore provided in sub. (2) (c).

SECTION 9. 80.11 (4) (b) 2. of the statutes is created to read:

80.11 (4) (b) 2. In the event that an order or part of an order is vacated under par. (a) 3., a majority of the supervisors of each town that is party to the order shall, before the time for making the next tax roll, meet together with a majority of the supervisors of the new town or with the president of the new village and attempt to make a new order apportioning the liabilities on account of the highway, which shall be filed as provided in sub. (2) (c).

* NOTE: Recreates language to reposition text in s. 80.11 (4). See the previous section of this bill

SECTION 10. 80.11 (5) of the statutes is amended to read:

80.11 (5) If they fail to make such order no agreement is reached under sub. (4) (b), or if the an order laying out, altering or widening such a town line highway shall has not have apportioned the liability of the towns or village on account of such the highway, the supervisors of either an affected town or the president of said an affected village, after ten 10 days' notice of the time and place of so doing hearing served on the clerk of each town and village to be affected, may apply to the circuit judge of the county in which such towns and village or the affected town or village on whose behalf such notice is given is located, for the appointment of three 3

1 commissioners to apportion the liabilities of ~~such towns~~ each affected town and
2 village on account of ~~such~~ the town line highway.

3 **SECTION 11.** 80.11 (6) and (7) of the statutes are amended to read:

4 80.11 (6) Upon ~~proper~~ application ~~such~~ under sub. (5), the circuit judge shall
5 appoint three 3 residents of ~~such~~ the county as commissioners. ~~They~~ The
6 commissioners shall ~~proceed~~, on not less than ~~five~~ 5 days' notice in writing to the
7 clerk of each town and village clerks, to make such apportionment, and their affected,
8 apportion the liabilities of each affected town and village on account of the highway.
9 The commissioners shall make the determination shall be made in writing and filed
10 shall file the determination with the clerk of each town and village affected, ~~and shall~~
11 ~~have.~~ The commissioners' determination has the same force and effect as an order
12 of the supervisors, and the village president made under sub. (2), (3) or (4).

13 (7) Any bridge on a highway that became a highway under s. 80.01 (2) as a
14 result of having been worked, that is between ~~two~~ 2 towns, or between a town on one
15 side and a village or a town and village on the other side, ~~which highway has become~~
16 ~~such by reason of having been used and worked as provided in s. 80.01 (2), which~~
17 bridge and that has not been assigned to either of the adjoining towns or village, shall
18 be repaired and maintained by ~~such~~ the adjoining towns and village, ~~and the.~~ The
19 cost of repairs and maintenance shall be paid by ~~them~~ the adjoining towns and
20 village in proportion to the valuation of the property ~~therein~~ in the adjoining towns
21 and village as equalized by the county board or boards at the last equalization.

22 **SECTION 12.** 80.11 (8) of the statutes is renumbered 80.11 (8) (a) and amended
23 to read:

24 80.11 (8) (a) ~~Unless~~ Except as provided in par. (b) and sub. (7) or unless
25 otherwise provided by statute or agreement, every highway bridge on a town, village

1 or city boundary shall be maintained by the municipalities in which it the bridge is
2 located, each contributing to the expenses thereof in proportion to the last
3 assessment of taxable property therein. ~~Provided, however, that any~~

4 (b) Any bridge, or bridges, over any stream or river forming the boundary line
5 between two 2 counties erected or maintained solely by one of the adjoining
6 municipalities, may be closed or discontinued by such the municipality so
7 maintaining the same when such bridge if the other adjoining municipality shall fail
8 fails to cooperate in such contribute towards the maintenance in of the bridge in the
9 following proportion:

10 1. In proportion to the amount of the cost thereof of erecting the bridge borne
11 by said the adjoining municipality that does not maintain the bridge, if the bridge
12 was erected at the joint expense of the two 2 adjoining municipalities; or, if not so
13 erected, then in,

14 2. In the proportion of one-half the cost of such maintenance, if the bridge was
15 not erected at joint expense.

NOTE: Subdivides provision, reorders text, deletes redundancies, replaces word
form of numbers with digits and replaces language for greater readability and conformity
with current style.

16 **SECTION 13.** 80.12 of the statutes is renumbered 80.12 (1) amended to read:

17 80.12 (1) Whenever it is ~~deemed~~ considered necessary to lay out, alter, widen
18 or discontinue a highway upon the line between a town and city or village or to lay
19 out, alter, widen or discontinue a highway or any part thereof of a highway extending
20 from a town to a city or village, the proceedings ~~therefor for that action~~ may be had
21 under s. 80.11. The application therefor to lay out, alter, widen or discontinue the
22 highway or any part of the highway shall be in duplicate, addressed to the
23 supervisors of the town and the common council of the city or the board of trustees

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1 of the village, and be signed by at least 6 freeholders of the town and 6 freeholders
2 of the city or village. ~~Thereupon such~~

3 (2) Upon receipt of an application under sub. (1), the common council or board
4 of trustees shall appoint 3 commissioners on the part of ~~such~~ the affected city or
5 village, ~~who. The commissioners~~ shall be duly sworn to faithfully discharge their
6 duties as ~~such~~ commissioners before entering ~~on the same. Such upon those duties.~~
7 The commissioners and town supervisors shall then give notice and proceed in all
8 respects as provided in s. 80.11; and such.

9 (3) The city or village shall be in like manner as a town responsible for that part
10 of ~~such~~ the affected highway that, under sub. (2), is determined to shall be made and
11 kept in repair by the ~~same~~ city or village and for the share of damages assigned to
12 the ~~same~~ city or village under sub. (2). The cost of repairs, improvement and
13 maintenance of any highway laid out on a line between a city and a town or village
14 or located on one or the other side of the line may be at the expense of ~~such~~ the
15 adjoining municipalities and the apportionment may be made as provided in s. 80.11
16 (3) to (6).

17 (4) The town board, and village board and or city council may cause any such
18 highway or ~~any part of such a~~ highway subject to the provisions of this section, which
19 is not less than 16 rods 264 feet in length, to be graded, paved, macadamized or
20 otherwise improved, including the establishment of the grade ~~and the~~ construction
21 of the curbs and gutters, and installation of water and sewer mains and service pipes,
22 ~~or either, and. The town board and village board or city council~~ may levy special
23 assessments for the whole or any part of the cost ~~thereof~~ of the improvements as a
24 tax upon ~~such~~ the property as that they shall determine as is especially benefited
25 thereby by the improvements, in the manner provided in s. 66.60.

1 (5) All proceedings and orders required to be filed and recorded shall be filed
2 and recorded in the office of the clerk of the affected city or village clerk as well as
3 ~~in the office of the or town clerk.~~

NOTE: Subdivides provision, replaces "rods" with a more common unit of measurement and replaces other language for greater readability and conformity with current style.

4 **SECTION 14.** 80.13 (1) of the statutes is amended to read:

5 80.13 (1) When any person shall ~~present to~~ presents the supervisors of any
6 town board with an affidavit satisfying them that that person is the ~~that meets the~~
7 requirements under sub. (1m), the town board shall set a time and place to conduct
8 a hearing regarding the laying out or widening of a highway. The hearing shall be
9 held after 10 days and within 30 days of the receipt of the affidavit by the town board.
10 Notice of the time and place of the hearing shall be served as required by s. 80.05 and
11 published as a class 2 notice under ch. 985.

12 (1m) The affidavit required under sub. (1) shall be executed by the owner or
13 lessee of real estate ~~(describing the same)~~ located within said the town, shall contain
14 a description of the affected real estate and that the same shall contain facts that
15 satisfy the supervisors that any of the following circumstances exists:

16 (a) The real estate described in the affidavit is shut out from all public
17 highways, ~~other than a waterway~~, by being surrounded on all sides by real estate
18 ~~belonging to~~ owned by other persons, or by such real estate owned by other persons
19 and by water, ~~or that that person is the owner or lessee of real estate (describing the~~
20 ~~same)~~ and that the owner or lessee is unable to purchase a right-of-way to a public
21 highway from the owners of the adjoining real estate or that such a right-of-way
22 cannot be purchased except at an exorbitant price, which price shall be stated in the
23 affidavit.

1 (b) 1. ~~The the owner or lessee is the owner of a private way or road leading,~~
2 ~~whose width shall be stated in the affidavit, that leads from said the described real~~
3 ~~estate to a public highway but that such the way or road or way is too narrow, giving~~
4 ~~its width, to afford that person the owner or lessee reasonable access to and from said~~
5 ~~the described real estate to said the public highway, that that person; and~~

6 2. ~~The owner or lessee is unable to purchase from any of said persons the a~~
7 ~~right-of-way over or through the same from the described real estate to a public~~
8 ~~highway, or that that person is unable to purchase from the owner or owners of land~~
9 ~~on either or both sides of that person's the owner's or lessee's way or road land to~~
10 ~~make such the way or road of sufficient width, or that it the right-of-way or~~
11 ~~additional land cannot be purchased except at an exorbitant price, stating the lowest~~
12 ~~which price for which the same the can be purchased, the said supervisors shall~~
13 ~~appoint a time and place for hearing said matter, which hearing shall be after ten~~
14 ~~days and within thirty days of the receipt of said stated in the affidavit.~~

15 **SECTION 15.** 80.13 (2) of the statutes is repealed.

NOTE: The text of sub. (2) is made a part of sub. (1). See the previous section of this bill.

16 **SECTION 16.** 80.13 (3) of the statutes is renumbered 80.13 (3) (a) and amended
17 to read:

18 80.13 (3) (a) The supervisors town board shall meet at the appointed time and
19 place stated in the notice given under sub. (1) and shall then in their discretion
20 proceed to lay out such a highway of not ~~more than three~~ nor less than ~~two~~ 33
21 feet nor more than 49.5 feet in width from the public highway to such the real estate,
22 described in the affidavit under sub. (1) (a) or (b) by either laying out a new highway
23 across the surrounding land or shall add by adding enough land to its the width of

SECTION 16

1 the existing way or road described in the affidavit under sub. (1) (b) to make it not
2 less than two 33 feet nor more than three rods 49.5 feet in width, and,

3 (b) The town board shall assess the damages to the owner or owners of the real
4 estate over or through which the same highway shall be laid or from whom land shall
5 be taken and the advantages to the applicant. The town board may not assess
6 damages in any amount exceeding the price stated in the affidavit of the applicant.

NOTE: Moves sentence regarding the award of damages from sub. (4) to sub. (3) for more appropriate placement. Reorders text, replaces "rods" with a more common unit of measurement and replaces other language for greater readability and conformity with current style.

7 **SECTION 17.** 80.13 (4) of the statutes is amended to read:

8 80.13 (4) ~~But the damages assessed by the supervisors shall in no case exceed~~
9 ~~the price stated in the affidavit of the applicant; upon~~ Upon ~~laying out such a~~
10 ~~highway, or in adding to the width of a former private way or road, they under sub.~~
11 ~~(3), the town board shall make and sign an order describing the same laid out~~
12 ~~highway and file the same order with the town clerk together with their its award~~
13 ~~of damages, which. The order shall be recorded by said the clerk; provided, that the~~
14 ~~amount assessed as advantages to the applicant shall be under sub. (3) is paid to the~~
15 ~~town treasurer before the order laying out such highway shall be filed.~~

NOTE: Moves sentence regarding the award of damages from sub. (4) to sub. (3) for more appropriate placement. Divides provision into multiple sentences and replaces language for greater readability and conformity with current style.

16 **SECTION 18.** 80.13 (5) of the statutes is amended to read:

17 80.13 (5) Whenever a parcel of land in any town which is accessible, or provided
18 with a right-of-way to a public highway, is subdivided and the owner thereof sells
19 ~~and transfers a any part thereof or sells a of the subdivided parcel of said land by~~
20 ~~metes and bounds, which part or parcel that~~ would otherwise be landlocked and shut
21 out from all public highways ~~other than a waterway, by reason of being surrounded~~

1 on all sides by real estate belonging to other persons or by such real estate belonging
2 to other persons and by water without an adequate right-of-way to a public highway,
3 the seller shall ~~in so subdividing said land or a part thereof or in selling a parcel of~~
4 ~~said land by metes and bounds~~ provide a cleared right-of-way at least 50 feet in
5 width ~~which~~ that shall be continuous from the highway to ~~each~~ the part, ~~parcel, lot~~
6 ~~or of the~~ subdivision sold. In case the seller fails to ~~do so~~ provide the required
7 right-of-way, the town board may, pursuant to proceedings under this section, lay
8 out a road from ~~such~~ the inaccessible land to the public highway over the remaining
9 lands of the seller without assessment ~~to the latter~~ of damages or compensation
10 ~~therefor to the seller~~.

NOTE: Deletes redundant language and inserts specific references.

11 **SECTION 19.** 80.23 of the statutes is amended to read:

12 **80.23 Removal of fences from highway; notice.** (1) Whenever pursuant
13 to this chapter, any highway is laid out, widened or altered through ~~inclosed~~
14 enclosed, cultivated or improved lands and the determination has not been appealed
15 from, the highway authorities shall give the owner or occupant of ~~such~~ the lands
16 written notice ~~in writing~~ to remove the fences located ~~thereon~~ on the highway within
17 ~~such a time as they shall deem~~ determined by the highway authorities to be
18 reasonable, but not less than 30 days after giving ~~such~~ the notice; ~~and if, If~~ the owner
19 or occupant does not remove the fences within the time required ~~in such~~ by the notice,
20 the highway authorities shall ~~cause~~ remove the fences ~~to be removed~~ and shall direct
21 the highway to be opened; ~~but if, If~~ the determination has been appealed from, the
22 notice shall be given after the final decision of the appeal.

23 (2) This section does not authorize the opening of a highway through ~~such~~
24 enclosed, cultivated or improved lands or the removal of fences between May 15 and

SECTION 19

1 September 15, except in cases of emergency to be determined by the highway
2 authorities.

NOTE: Divides long sentence and replaces language for greater readability and conformity with current style.

3 **SECTION 20.** 80.24 (1) and (2) of the statutes are amended to read:

4 80.24 (1) Except as provided in sub. (2), an owner of lands through which a
5 highway is laid out, widened, altered or discontinued who is not satisfied with the
6 award of damages under s. 80.09 may, within 30 days after the filing of the award,
7 appeal to the circuit judge court of the county for a jury to assess the damages.

8 (2) An owner of lands through which a highway is laid out, widened, altered
9 or discontinued who has appealed under s. 80.17 from the order laying out, widening,
10 altering or discontinuing the highway and who is not satisfied with the award of
11 damages under s. 80.09 may, within 30 days after the entry of a final order on the
12 appeal affirming the order, appeal to the circuit judge court of the county for a jury
13 to assess the damages.

14 **SECTION 21.** 80.24 (5) (intro.) and (a) of the statutes are consolidated,
15 renumbered 80.24 (5) and amended to read:

16 80.24 (5) The At least 6 days before making an appeal under this section, the
17 appellant shall serve written notice on 2 of the supervisors of the town in which the
18 highway is situated, or upon 2 or more of the supervisors or commissioners of the
19 town, city or village ~~who have been assigned the duty of~~ responsible for paying the
20 damages for the land, ~~at least 6 days before making the appeal, a.~~ The notice in
21 ~~writing, specifying the following: (a) The~~ shall state the name of the judge to whom
22 the appeal will be made and the date, time and place at which the appeal will be
23 heard.

1 **SECTION 22.** 80.24 (5) (b) and (c) of the statutes are repealed.

2 **SECTION 23.** 80.25 of the statutes is renumbered 80.25 (1) and amended to read:

3 80.25 (1) Any taxpayer of a ~~town or other~~ municipality in which a highway is
4 laid out, altered or discontinued or any part thereof is situated, and which is required
5 to pay damages resulting ~~therefrom~~ from the laying out, alteration or
6 discontinuation, may ~~appeal~~, within 30 days after the award or agreement
7 determining the damages has been filed with the ~~town, city or village~~ municipal
8 clerk, appeal to the circuit judge court of the county for a jury to assess the damages
9 sustained by the persons to whom damages were awarded or are to be paid.

10 (2) The appeal under this section shall be in writing, describing the premises
11 and naming the persons to whom damages are to be paid, and the amount awarded
12 to each, and, unless appealing from all of the awards, shall specify the particular
13 award from which the taxpayer appeals ~~in case he or she does not appeal from all~~.
14 The appellant shall serve written notice of the appeal upon 2 of the supervisors of the
15 town or ~~upon~~ 2 of the commissioners of the city or village ~~to which has been assigned~~
16 ~~the duty of that is responsible for~~ paying the damages and upon the persons whose
17 awards are appealed from, the appellant makes the

18 (3) The notice under sub. (2) shall be served at least 6 days before making the
19 ~~making the~~ application, a notice in writing specifying therein for a jury to assess
20 damages. The notice shall state the name of the judge to whom and who will hear
21 the application and the time and place appellant will apply for the selection of the
22 jury hearing.

NOTE: Subdivides provision, reorders and replaces language for greater readability
and conformity with current style and consistency with s. 80.24. See the previous section
of this bill.

23 **SECTION 24.** 80.26 of the statutes is amended to read:

1 **80.26 Appeal bond.** The appellant under s. 80.24 or 80.25 shall execute to the
2 proper town, city or village and file with the judge circuit court a bond with one or
3 more sureties to be approved by ~~such judge~~ the circuit court. In case the appeal is
4 by a landowner, the bond shall be conditioned to pay all costs arising from ~~such the~~
5 appeal if the jury shall does not award the appellant an increase of damages. In case
6 of an appeal by a taxpayer ~~as such~~ under s. 80.25, the bond shall be conditioned that
7 the appellant shall pay all costs arising from ~~such the~~ appeal if the amount of
8 damages in the aggregate of the items appealed from ~~shall is not be diminished upon~~
9 by the appeal.

NOTE: Inserts cross-references and replaces language for greater clarity and conformity with current style.

10 **SECTION 25.** 80.27 of the statutes is renumbered 80.27 (1) (intro.) and amended
11 to read:

12 80.27 (1) (intro.) Upon the filing of the bond required under s. 80.26 and notice
13 of the appeal with proof of service thereof of the notice, the jury shall be selected and
14 summoned in the following manner:

15 (a) The judge shall make out a list of 15 disinterested resident freeholders of
16 the county, not of kin to the owner or occupant of the lands.

17 ^{any} (b) Each party in turn shall strike 5 persons from ~~such the~~ list, and if none of
18 the proper supervisors or commissioners or other appellee is present, the judge shall
19 strike off the 5 names for them, and ~~the missing appellee~~ party

20 (c) The judge shall ~~thereupon~~ issue an order to the sheriff or ~~some~~ a constable
21 of the county to summon the 5 persons ~~named in such list and~~ whose names were not
22 stricken off to under par. (b) to meet at a time and place ~~to be specified in such the~~
23 order to appraise the damages, the award of which has been appealed from.

1 (2) In case any juror fails to appear at the time and place fixed for ~~their~~ the
2 meeting under sub. (1)(c), the judge shall summon another juror shall be summoned
3 in the missing juror's place.

4 (3) Any juror may be excused for good cause, ~~and if any.~~ Any juror duly who
5 is summoned and under sub. (1)(c), is not excused and fails to serve ~~that juror~~ shall
6 forfeit not to exceed \$10, and shall be liable to the party having the costs of the appeal
7 to pay for additional costs ~~made in consequence of such~~ resulting from the juror's
8 failure to serve.

NOTE: Subdivides provision, inserts cross-references and replaces language for
greater clarity and conformity with current style.

9 **SECTION 26.** 80.28 of the statutes renumbered 80.28 (1) and is amended to read:

10 80.28 (1) The jury selected under s. 80.27 shall be sworn by the judge to justly
11 and impartially ~~to make such appraisal, and appraise the damages, the award of~~
12 which is appealed from. The jury shall proceed to view such the highway, subject to
13 the appealed order, and hear the statements and proofs of the parties, ~~and such.~~ The
14 jury may increase or ~~diminish~~ decrease the amount awarded, and ~~they shall make~~
15 sign and return of their the jury's appraisal to the judge signed by them; and in.

16 (2) (a) In case of appeal by a landowner ~~if the jury shall increase the award~~
17 under s. 80.24, the costs and expenses of the proceedings shall be paid by the proper
18 town, city or village; ~~but if the jury shall not increase the award the costs and~~
19 expenses shall be paid by the appellant, and in if the jury increases the amount
20 awarded or by the appellant if the jury does not increase the amount awarded.

21 (b) In case of an appeal by a taxpayer ~~if the award appealed from is diminished,~~
22 the costs and expenses of the proceedings shall be paid by the town, city or village,

1 otherwise if the jury decreases the amount awarded or by the appellant if the jury
2 does not decrease the amount awarded.

3 (c) In case of cross-appeals if the damages involved ~~therein~~ are unchanged,
4 each appellant shall pay half 50% of said ~~the~~ costs and expenses of the proceedings.

5 (3) If the jury ~~shall fail~~ fails to agree and ~~be is~~ discharged by the judge for that
6 reason, the judge shall immediately ~~proceed to make~~ select another ~~list of such~~
7 ~~freeholders, jury under this section and s. 80.27 (1) and further proceedings shall be~~
8 ~~had thereon on the appeal under s. 80.27 and this section in all respects as in the case~~
9 of a first jury.

10 (4) (a) When the jury ~~shall have made a return of their~~ has returned its
11 appraisal to the judge, the judge shall adjust the costs and expenses of ~~such the~~
12 proceedings, and within 10 days thereafter return ~~such the~~ appraisal to the town
13 clerk, together with ~~all the other following, which shall be filed by the clerk:~~

14 1. All papers relating to ~~such the~~ appeal, ~~a,~~

15 2. A statement of the proceedings had before the judge, ~~and,~~

16 3. A detailed statement of the cost and expenses ~~in detail, duly of the~~
17 ~~proceedings~~ certified by the judge, ~~which shall be forthwith filed by the clerk; and if~~
18 ~~two,~~

19 (b) If ^{plain space} ~~2~~ towns or a town and a city or village be are interested, the judge shall
20 make and file a certified copy of the appraisal papers and statements with the clerk
21 of ~~such other~~ each interested town, city or village.

NOTE: Subdivides provision, inserts cross-references, replaces word form of
number with digits and replaces language for greater clarity and conformity with current
style.

22 SECTION 27. 80.29 of the statutes is amended to read:

1 **80.29 Appeal costs; jurors' fees.** Each juror who serves under s. 80.28 shall
2 receive \$3 for services and 10 cents a mile for actual and necessary travel in going
3 to and returning from the place of meeting, Costs under this section are payable in
4 advance by the party appealing; and ~~to be~~ are a charge against the party finally liable
5 for the costs of the proceeding.

NOTE: Inserts cross-reference for greater clarity.

6 **SECTION 28.** 80.32 (4) of the statutes is renumbered 80.32 (4) (a) (intro.) and
7 amended to read:

8 80.32 (4) (a) (intro.) Whenever any public highway or public ground has been
9 vacated or discontinued ~~the~~, any easements and rights incidental thereto acquired
10 by or belonging to any county, school district, town, village or city or to any utility or
11 person ~~in and relating to~~ any underground or overground structures, improvements
12 or services and all rights of entrance, maintenance, construction and repair of the
13 ~~same structures, improvements or services~~ shall continue, unless one of the following
14 applies:

15 1. The owner of the easements and incidental rights gives written consent to
16 the discontinuance of ~~such the~~ easements and rights ~~by the owner thereof is as~~ a part
17 of the vacation or discontinuance proceedings and ~~reference thereto is made in the~~
18 vacation or discontinuance resolution, ordinance or order, ~~or discontinued by failure~~
19 refers to the owner's written consent.

20 2. The owner of the easements and incidental rights fails to use the same
21 easements and rights for a period of 4 years from the time that the public highway
22 or public ground was vacated or discontinued. ~~Upon the failure of the interested~~
23 ~~parties to reach an agreement permitting discontinuance of such~~

1 (b) (intro.) The easements and incidental rights or upon refusal of the owner
2 of such easements and rights to give written consent to the discontinuance thereof,
3 such easements and rights described in par. (a) may be discontinued in the vacation
4 or discontinuance proceedings in any case where benefits or damages are to be
5 assessed as herein provided. in par. (c), if one of the following applies:

6 (c) Damages for the discontinuance of such the easements and rights, in the
7 described in par. (a) shall be assessed against the land benefited in the proceedings
8 for assessment of damages or benefits upon the vacation or discontinuance of the
9 public highway or public ground. The amount of the damages shall be the present
10 value of the property to be removed or abandoned, plus the cost of removal, less the
11 salvage thereon value of the removed or abandoned property, or in such any other
12 amount as that may be agreed upon between the interested parties, shall be assessed
13 against the land benefited in the proceedings for assessment of damages or benefits
14 upon the vacation or discontinuance of the public highway or public ground. The
15 owner of such the easements and incidental rights, upon application to the treasurer
16 and upon furnishing satisfactory proof shall be entitled to any payments of or upon
17 such the assessment of damages.

18 (d) Any person aggrieved by such the assessment of damages under this
19 subsection may appeal therefrom the assessment in the same time and manner as
20 is provided for appeals from assessments of damages or benefits in vacation or
21 discontinuance proceedings in the town, village or city.

NOTE: Subdivides provision, repositions text and deletes redundant and outdated
language for greater readability and conformity with current style.

22 **SECTION 29.** 80.32 (4) (b) 1. and 2. of the statutes are created to read:

1 80.32 (4) (b) 1. The interested parties fail to reach an agreement permitting
2 discontinuance of the easements and incidental rights.

3 2. The owner of the easements and incidental rights refuses to give written
4 consent to their discontinuance.

NOTE: Recreates language to reposition text in s. 80.32(4). See the previous section
of this bill.

5 **SECTION 30.** 80.37 of the statutes is renumbered 80.37 (1) and amended to read:

6 80.37 (1) Whenever the record of the laying out of any highway ~~has been or~~
7 ~~shall be~~ is lost or destroyed, the supervisors of the town in which ~~such~~ the highway
8 is situated located, upon notice being served on all interested parties in accordance
9 with s. 80.05, may make a new record thereof by ~~a written order, which shall be~~
10 ~~entered on the town records. Whenever the supervisors shall contemplate making~~
11 ~~such new record they shall make a~~ of the highway. The notice and shall fix therein
12 a the time when and place ~~at which they where the supervisors will meet and decide~~
13 upon the same, which making the new record. The notice shall specify as near as may
14 be the highway as to for which they propose to make such the proposed record. Such
15 ~~notice shall be served as provided by s. 80.05; but notice will be made. Notice need~~
16 ~~not be given to such persons as who waive the same notice or consent to the making~~
17 ~~of the order either before or after it is entered.~~

18 (2) The supervisors shall meet pursuant to the notice given under sub. (1) and
19 hear any arguments or evidence that may be offered for or against the proposed new
20 record; and ~~thereupon decide~~ make a new record as they deem consider proper. ~~They~~
21 The supervisors may adjourn from time to time, and an entry of each adjournment
22 shall be made in the record by the town clerk. If ~~they~~ the supervisors find that the
23 highway is a legal one highway the record ~~whereof of which~~ is lost or destroyed, they

1 shall make ~~an a written order determining such stating those facts~~ and specifying
2 the course, width and other pertinent description of the highway, ~~and such.~~ The
3 order shall be filed and recorded in the office of the town clerk, who shall note the time
4 of recording ~~it the order~~ in the record. Any number of highways may be included in
5 one ~~such~~ notice or order, ~~and a~~ under this section. A failure or refusal to make a new
6 record for any highway ~~shall~~ does not preclude a subsequent proceeding for that
7 purpose.

8 (3) Any person through whose land ~~such a highway shall pass~~ described in an
9 order entered under sub. (2) passes may appeal from ~~such the~~ order on the ground
10 that the highway described ~~therein in the order~~ was not ~~theretofore~~ a legal highway
11 in fact. The appeal shall be made in the time and manner provided for appealing from
12 orders laying out highways, and like proceedings, as near as may be, shall be had
13 thereon on the appeal as in case of appeals from ~~such~~ orders. ~~The laying out~~
14 highways. No person may call into question the regularity of such proceedings shall
15 not be called in question by any person under this section except owners of land on
16 whom ~~such~~ notice should have been served but ~~on whom it was not in fact served, was~~
17 not and persons claiming under ~~such~~ those owners.

NOTE: Subdivides provision, repositions text, inserts specific references and
cross-references and deletes redundant and outdated language for greater readability
and conformity with current style.

18 **SECTION 31.** 80.48 (3) of the statutes is renumbered 80.48 (3) (a) and amended
19 to read:

20 80.48 (3) (a) At the time and place specified in the notice given under sub. (2),
21 the circuit judge of the county, the president of the village or the chairperson of the
22 town in which the land sought to be taken lies shall issue a precept directed to the
23 sheriff of the county or to any constable, naming the sheriff or constable, ~~which.~~ The

1 precept shall direct the ~~officer to write~~ sheriff or constable to make a written list
2 containing the names of 36 freeholders of the county who are qualified to serve as
3 jurors in the circuit court and to return the list. After being sworn to perform the
4 duties required to the best of his or her ability, without partiality, the ~~officer~~ sheriff
5 or constable shall immediately write the names make and deliver the list thereof to
6 the officer who issued the precept; ~~and from~~.

7 (b) From the list made under par. (a), each party, in person or by an agent or
8 attorney, commencing with the petitioner, shall in turn strike out ~~alternately, a name~~
9 from the list until each has stricken 12 names, ~~and if~~. If either party is absent or
10 refuses to strike out the names, the officer who issued the precept shall appoint some
11 person to strike 12 names for the absent ~~or nonparticipating~~ person. The officer shall
12 then summon the 12 persons whose names remain on the list in the manner
13 prescribed under s. 756.05 to appear at the time and place mentioned in the
14 summons for the purpose of determining the necessity of taking for the public use the
15 land described in the petition; ~~if~~. If any of the persons summoned fail to attend others
16 may be selected in the same ~~mode~~ manner to fill the vacancy, and for that purpose
17 the proceedings may be adjourned from time to time.

18 (c) When 12 persons ~~are thus~~ have been secured in accordance with par. (b),
19 they shall be sworn by the officer who issued the precept to faithfully and impartially
20 discharge the duties imposed upon them, ~~which~~. The oath shall be filed with the city,
21 village or town clerk.

22 (d) The number of persons listed and summoned shall be proportionately
23 reduced if the jury is to consist of a number less than 12.

NOTE: Subdivides provision, shortens sentences, reorders text, inserts cross-references, and replaces language for greater readability and conformity with current style.

1 **SECTION 32.** 80.48 (4) of the statutes is renumbered 80.48 (4) (a) and amended
2 to read:

3 80.48 (4) (a) After the jurors selected under sub. (3) are sworn, the circuit or
4 municipal judge, president or chairperson shall issue his or her precept directed to
5 them and requiring that within 10 days they shall view the land specified ~~therein and~~
6 ~~make return to him or her under their hands in the precept and issue a decision,~~
7 ~~signed by each juror,~~ as to whether it is necessary to take ~~it~~ the land for public use
8 as described in the petition;~~the.~~ The jurors shall, at a time to be fixed by them, view
9 the premises;~~the.~~ The parties interested shall have notice of the time of, and may
10 offer to the jury any evidence pertinent to, the inquiry;~~after.~~ After viewing the
11 premises and hearing the evidence the jury shall determine whether a necessity
12 exists for taking the land and shall return ~~their~~ its verdict to the officer who issued
13 the precept.

14 (b) ~~On the receipt thereof of the jury's verdict,~~ the officer shall, as soon as ~~may~~
15 ~~be possible,~~ submit the same verdict to the council, trustees or supervisors, and for
16 that purpose may call a meeting of either body and deliver the verdict to them;~~the.~~
17 The body to which ~~it~~ the verdict is so delivered shall, if in ~~their~~ its judgment the public
18 good requires it, immediately make an order laying out a street or highway from the
19 nearest street or highway which can be used as a convenient means of approach to
20 the cemetery, fairground or land used for industrial expositions. The street or
21 highway so laid shall not be less than 3 49.5 feet nor more than 4 ~~reds~~ 66 feet in width,
22 and.

23 (c) The body issuing the order under par. (b) shall, in the order ~~they shall,~~
24 appoint 3 disinterested residents of the county as commissioners ~~who.~~ The
25 commissioners shall, after notice to the owners or occupants of the land and after

1 being sworn to support the U.S. constitution of the ~~United States~~ and the
2 constitution of this state and faithfully discharge their duties to the best of their
3 ability, assess adequate damages to the owners of the land through which the street
4 or highway is laid. The award of damages shall be signed by the commissioners and
5 be returned to the city, village or town clerk.

NOTE: Subdivides provision, shortens sentences, inserts cross-references, replaces
“rods” with a more common unit of measurement and replaces other language for greater
readability and conformity with current style.

6 **SECTION 33.** 80.48 (5) of the statutes is amended to read:

7 80.48 (5) OPENING HIGHWAY. The street commissioner of ~~such~~ the city or village
8 or the superintendent of highways of ~~such~~ the town, ~~after who made the order under~~
9 sub. (4) laying out ~~such~~ the street or highway has been filed, upon the filing of the
10 order with the city, village or town clerk, shall ~~forthwith~~ immediately open the street
11 or highway ~~so laid~~, provided that the petitioner shall have paid to the city, village or
12 town treasurer the damages awarded.

NOTE: Replaces language and inserts a cross-reference for greater readability and
conformity with current style.

13 **SECTION 34.** 80.48 (6) of the statutes is renumbered 80.48 (6) (a) and amended
14 to read:

15 80.48 (6) (a) If any Any person through whose land ~~such~~ a street or highway
16 is laid or the petitioner shall be may, if dissatisfied with the damages awarded ~~either~~
17 may under this section, appeal to the circuit court of the county in which the land is
18 situated located. The appeal is commenced by serving a notice of appeal and
19 undertaking upon the opposite party, with at least ~~two~~ 2 sureties, conditioned for the
20 payment of all costs and damages which may be incurred if the appellant ~~shall~~ does
21 not succeed; ~~such~~. The notice and undertaking shall be filed with the city, village or
22 town clerk, who shall be entitled to receive ~~two dollars~~ \$2 for fees in making return

1 to the clerk of the circuit court as hereinafter required; ~~provided, that such appeal~~
2 ~~shall under par. (b). An appeal made under this paragraph does~~ not impair the right
3 of the public to use ~~such~~ the street or highway for the purpose of travel.

4 (b) Within ~~ten~~ 10 days after ~~such papers~~ the notice and undertaking are filed
5 and ~~such~~ payment of the fees is made, the clerk with whom ~~they~~ the notice and
6 undertaking are filed shall transmit the papers pertaining to the subject matter of
7 the appeal to the clerk of the circuit court, who shall file them in the clerk of court's
8 office, ~~and upon such.~~ Upon filing with the clerk of circuit court, the appeal ~~shall be~~
9 is considered an action pending in ~~such~~ the circuit court, subject to a change of the
10 place of trial and an appeal to the supreme court as in other actions. The appeal shall
11 be entered upon the records by making the ~~party who took it~~ appellant the plaintiff
12 and the other party the defendant; ~~it.~~

13 (c) The appeal shall be tried by a jury unless ~~such mode of trial~~ the jury is
14 waived, ~~and costs.~~

15 (d) Costs shall be allowed to the successful party, ~~and if.~~ If the landowner is
16 the successful party shall be, the ~~landowner costs~~ shall be added to the judgment, ~~and~~
17 if. If the petitioner is the successful party, the costs shall ~~be~~ petitioner be deducted
18 ~~therefrom~~ from the judgment.

NOTE: Subdivides provision, shortens sentences, replaces word form of numbers
with digits and replaces language for greater readability and conformity with current
style.

(END)

LRB-0115/P3dn
TNF: cmh

DRAFTER'S NOTE

ATTN: Bruce Hoesly

Please review proposed s. 80.27(1)(b). I have reworded that provision to allow a judge to strike the names of persons for "any missing party" rather than "the missing appellee". Current law refers to "them", i.e., the two parties to the appeal (who each get 5 strikes).

TNF

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0115/P3dn
TNF:cmh:hmh

April 21, 1999

ATTN: Bruce Hoesly

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